

**Ministry of the Environment
Guidance Related to Section 21.1 Notice
October 2010**

Background:

Section 21.1 of the amended Ontario Regulation 153/04 (the regulation) came into effect on July 1, 2010.

This section sets out requirements to allow an owner of property to use the “March 9, 2004 Soil, Ground Water and Sediment Standards” (2004 standards) and associated provisions of the current regulation in certain circumstances after July 1, 2011.

An owner who wants to use the 2004 standards must meet certain eligibility requirements and submit a Notice to the Ministry concerning the requirements before January 1, 2011. The Notice form may be found on the Ministry’s website at the following link: <http://www.ene.gov.on.ca/publications/7628e.pdf>.

In particular, the owner must:

- certify in the Notice that a risk assessment with respect to a contaminant at the property has been submitted to the Ministry, and provide the risk assessment (RA) number and submission date;
- certify in the Notice that action to reduce the concentration of a contaminant on, in or under the property in order to meet a standard specified in a risk assessment accepted by the Director for the contaminant with respect to the property or, where none exists, the applicable site condition standard for the contaminant, has begun; or
- where a submitted risk assessment has a risk assessment number, *and* action to reduce the concentration of a contaminant as outlined above has begun, make both certifications specified above.

In addition, a qualified person’s certification that a phase one environmental site assessment has been completed must also be included, along with information about the property itself.

Interpretation

The phrase “action taken to reduce the concentration of contaminants” has been used in the regulation since it came into effect. It means a physical action which will lessen the concentration of a contaminant, such as remedial or clean-up activities.

For example, section 27 of Schedule A of the regulation requires a qualified person to describe, on the record of site condition (RSC) form, any soil removals or “other action taken to reduce the concentration of contaminants on, in or under the RSC property...” Other references in this part of the RSC to what such actions are include:

- excavation of soil from the property; and
- injection of a chemical oxidant.

The phrase “action taken to reduce the concentration of contaminants” in section 21.1 of the regulation means the same thing as outlined above: a physical action to reduce the concentration of one or more contaminants at the property has been taken.

Frequently Asked Questions

Question:

I have a property with financing in-place and I am ready to start the phase one environmental site assessment. Am I eligible to use the Notice under section 21.1?

Answer:

No, for the following three reasons:

- No phase one environmental site assessment has been done;
- You have neither submitted a pre-submission form nor a risk assessment and obtained a RA number; and
- You have not taken any action to reduce the concentration of a contaminant at the property.

Question:

I have submitted a risk assessment to the Ministry but I have not received a RA number yet. Am I eligible to use the Notice under section 21.1?

Answer:

No. There must be a RA number included in the notice. A RA number will be issued after the receipt of a complete risk assessment submission.

Question:

I have submitted a pre-submission form to the Ministry but have not yet submitted a risk assessment. Am I eligible to use the Notice under section 21.1?

Answer:

No. You must have finished the pre-submission process, submitted a complete risk assessment, and received a RA number.

Question:

I have completed a phase one environmental site assessment, but I have not submitted a risk assessment or started any physical activities (e.g., excavation, in situ treatment, ground water extraction) at the property to reduce the concentration of contaminants present in soil, ground water and/or sediment. Am I eligible to use the Notice under section 21.1?

Answer:

No. You are not eligible because no risk assessment has been submitted to the Ministry and no action to reduce the concentration of a contaminant has been taken.

Question:

I have completed a phase one and some limited phase two environmental assessment work, and I have prepared a remedial action plan to address the remaining work required at the site. If I demolish the existing building, will this meet the requirement to submit a Notice under section 21.1?

Answer:

No, as no action has been taken to reduce the concentration of a contaminant at the property.

Question:

I have completed a phase one environmental site assessment, and have submitted a risk assessment and obtained a RA number. I now have to demolish buildings before I can complete the investigation and delineation of contaminants in soil and ground water at the property; however, I have excavated soil from one of the source areas on the property in order to reduce the concentration of contaminants present in soil. Am I eligible to use the Notice under section 21.1?

Answer:

Yes, for two reasons. The phase one environmental site assessment is complete and you have submitted a risk assessment and obtained a RA number and therefore can make this certification. In addition, you can certify that action taken to reduce the concentration of a contaminant has begun. If you wish to submit a Notice under section 21.1 in these circumstances, you need to make both these certifications.

Question:

I have completed a phase one environmental site assessment which meets the existing requirements in the regulation. However it does not comply with all the requirements for phase one environmental site assessments which come into effect on July 1, 2011. I have also submitted a risk assessment and obtained a RA number. Am I eligible to use the Notice under section 21.1?

Answer:

Yes, you are eligible to use the Notice under section 21.1 because you have completed a phase one environmental site assessment, submitted a risk assessment, and have a RA number.

(Note: It is important to remember that when a record of site condition is later submitted, a phase one environmental site assessment which meets the requirements at that time must have been completed. These will be the requirements which take effect)

July 1, 2011 since section 21.1 only applies to records of site condition submitted after this date. Therefore a new or updated phase one environmental site assessment must be completed.)

Question:

I have a plan of subdivision where I have highlighted the property. Will the Ministry accept this?

Answer:

No. A current plan of survey, prepared, signed and sealed by an Ontario Land Surveyor, showing the property, must be submitted along with the Notice. (Note that the survey does not have to be a plan of subdivision.)

Question:

Can I use publicly available maps to obtain the geographic coordinates of the centroid of the property?

Answer:

After July 1, 2011, the use of a Global Positioning System (GPS) receiver to obtain relevant geographic coordinates will be mandatory. Prior to this, the Ministry recommends that the qualified person use a GPS receiver.